

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Caribevision Station Group, L.L.C.)	File Number: EB-09-MA-0216
)	
Licensee of Station WFUN-LD)	NAL/Acct. Number: 201032600002
Miami, FL)	
Facility ID Number: 60542)	FRN: 0015739246

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 6, 2010

Released: May 10, 2010

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Caribevision Station Group, L.L.C. (“Caribevision”), licensee of station WFUN-LD, in Miami, FL, apparently willfully and repeatedly violated Section 11.35(a) of the Commission’s Rules (“Rules”) by failing to install operational Emergency Alert Systems (“EAS”) equipment and apparently willfully violated Section 74.735(b)(2) of the Rules¹ by exceeding the maximum effective radiated power (“ERP”) for a digital low power television (“LPTV”) station. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Caribevision is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On December 18, 2009, the Enforcement Bureau’s Miami Office (“Miami Office”) received a complaint alleging that WFUN-LD was exceeding its authorized power as stated on the station’s license.

3. On January 7, 2010, agents from the Miami Office, accompanied by the station’s chief engineer and other station staff, conducted an inspection of the main studio of WFUN-LD. The agents observed during the course of this inspection that station WFUN-LD did not have an EAS decoder. The chief engineer stated that the station had not installed an EAS decoder since its main studio moved to the current facility in November 2009.

4. Also on January 7, 2010, the agents, accompanied by the station’s transmitter technician, conducted an inspection of the transmitter site for WFUN-LD. The transmitter power output (“TPO”) on the station’s license was listed at 498 W or .498 kW with an ERP of 15 kW. The agents observed that the TPO was set at 3.565 kW, which meant the station was transmitting with an ERP of 41 kW.³ The

¹ 47 C.F.R. §§ 11.35(a), 74.735(b)(2).

² 47 U.S.C. § 503(b).

³ This estimate utilizes engineering data provided by the licensee, an antenna gain of 13.75 dBd, and a line
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transmitter technician adjusted the TPO to .498 kW at that time, thereby demonstrating that the equipment was operational.

5. On January 8, 2010, an agent from the Miami Office spoke to an attorney representing the licensee concerning the transmitter power output for WFUN-LD. The attorney stated that the WFUN-LD license was incorrect and provided the agent engineering data for the station. The engineering data indicated that the station should operate at a TPO of 1.34 kW to achieve an ERP of 15 kW. Therefore, the station still exceeded the maximum ERP of 15 kW when the agents conducted the inspection of the transmitter site. Caribevision subsequently applied for, and was granted, a modification to its license to reflect the correction in TPO from 498 W to 1.34 kW.⁴

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁶

7. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to refrain from participation, and that request is approved by the Commission.⁷ The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.⁸ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.⁹ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

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efficiency of 47.28%.

⁴ See Station Authorization for WFUN-LP, BLDTL-20090615ADJ.

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁷ 47 C.F.R. §§ 11.11, 11.41.

⁸ 47 C.F.R. §§ 11.1, 11.21.

⁹ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

8. Section 11.11(a) of the Rules require digital LPTV stations to have an EAS decoder.¹⁰ Section 11.35(a) of the Rules require broadcast stations to maintain operational EAS encoders, decoders and attention signal generating equipment and receiving equipment so that monitoring and transmitting functions are available during times the stations are in operation.¹¹ During the inspection of WFUN-LD's main studio on January 7, 2010, agents from the Miami Office observed that the station had not installed an EAS decoder. The station's chief engineer stated that the station never installed an EAS decoder at its current facility. Therefore, we find that Caribevision apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to install an EAS decoder at the station's main studio.

9. Section 74.735(b)(2) of the Rules states that the maximum ERP of a digital low power TV, TV translator, or TV booster station shall not exceed 15 kW for UHF channels 14-69.¹² Station WFUN-LD is assigned UHF channel 48.¹³ According to the station's corrected license, to comply with the 15 kW maximum ERP, its TPO may not exceed 1.34 kW. During the inspection of WFUN-LD's transmitter site on January 7, 2010, agents from the Miami Office observed the TPO of the transmitter to be 3.565 kW, which means the station was operating with an ERP of approximately 41kW. The transmitter appeared to be functioning properly, as Caribevision was able to reduce the TPO during the inspection. Therefore, on January 7, 2010, the station exceeded the maximum TPO and maximum ERP. Based on the evidence before us, we find that Caribevision apparently willfully violated Section 74.735(b)(2) of the Rules by exceeding the maximum ERP for a digital LPTV station.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to have EAS equipment installed is \$8,000 and the base forfeiture amount for exceeding power limits is \$4,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Caribevision is apparently liable for a \$12,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Caribevision Station Group, L.L.C. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Sections 11.35(a) and 74.735(b)(2) of the Rules.¹⁶

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Caribevision Station Group, L.L.C. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹⁰ 47 C.F.R. § 11.11(a).

¹¹ 47 C.F.R. § 11.35(a).

¹² 47 C.F.R. § 74.735(b)(2).

¹³ See Station Authorization for WFUN-LP, BLDLTL-20090615ADJ.

¹⁴ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 11.35(a), 74.735(b)(2).

13. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Caribevision will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Caribevision Station Group, L.L.C. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Michael Mattern
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.